providing that the rate of wages for laborers on work done by contract for the city in the improvement of the streets shall not be less than a certain sum for a calendar day's work of eight hours, is constitutional and valid.

The state may within its police power look after the health, safety and comfort of its citizens. *Holden v. Hardy*, 169 U. S. 366; *State v. Buchanan*, 29 Wash. 603. And the only state, perhaps, that holds the eight hour law, as applied to miners, invalid is Colorado. *In re Morgan*, 28 Colo. 415. It is clearly within the power of the state to limit the number of hours a laborer may be permitted to work in one day on any public work undertaken by it. *In re Dalton*, 61 Kan. 257; *People v. Beck*, 30 N. Y. Supp. 473. The power to do this rests upon the principle that it belongs to the state to prescribe the conditions upon which it will permit public work to be done on its behalf. *Atkin v. Kansas*, 191 U. S. 207. A contractor or laborer cannot object upon constitutional grounds to a liability which he has voluntarily assumed, in consideration of a benefit conferred. *Bertholf v. O'Reilly*, 74 N. Y. 517.

NUISANCE — ACTION FOR DAMAGES — LEASED PREMISES. — MILLER ET AL. v. ELECTRIC ILLUMINATING CO. OF N. Y., 76 N. E. 734 (N. Y.) *Held*, that plaintiff could not recover for any depreciation in the rental value pending the lease as the tenant was alone entitled to recover for any such injury. Gray, Bartlett and Haight, JJ., *dissenting*.

The settled rule of law seems to be that the owner of the reversion may sue in an action on the case when an injury to his reversionary interest is committed, 4 *Kent's Com.* 119; 8 Pick. 235; 31 Iowa 138; *Tiffany on Real Property* Vol. 1 p. 93. The judges of the majority opinion in the case *supra* admit this but hold that the injury necessarily must be of a permanent character, 29 N. Y. Sup. 1000. It is also admitted that the defendant, having separate assets, may sue for the diminution of his enjoyment of the premises. But when the question of which shall sue for the depreciation of rental value comes up the authorities are in conflict. The case of *City of Eufaula v. Simmons*, 86 Ala. 515, holds that the damage suffered was properly measured by the diminished rental value of the premises for the year during which the nuisance continued if he elected to claim only for that period, waiving the question of permanent injury. *The Tallman case*, 121 N. Y. 118; *Lawrence case*, 126 N. Y. 483; *Whitmark v. N. Y. Elev. R. R.*, 76 Hun. 302; *Diermger v. Wehrman*, (Dist. Ct.) 12 Wkly Law Bul. 222, substantially hold to the same view. But the majority opinion in the case reported hold that these cases or the Elevated R. R. cases are *sui generis* and are governed by principles which apply to no other class of cases. They are supported in this view by, *Stowers v. Gilbert*, 156 N. Y. 604; *Ottentot v. N. Y. L. & W. R. Co.*, 119 N. Y. 603; *Uline v. N. Y. C. & H. R. R. Co.*, 101 N. Y. 98.

PATENTS — CONTRACTS — ROYALTIES. — BENNETT V. IRON CLAD MFG. CO., 96 N. Y. SUP. 968. Defendant acquired the right to manufacture and sell plaintiff's patented article during the life of the patent, and agreed to pay plaintiff a royalty on each article manufactured. On defendant's failure to pay the royalties, plaintiff recovered judgment for the royalties and for the cancellation of the contract. The judgment was affirmed on defendant's

appeal. Pending the appeal it continued to make and sell the article. *Held*, that plaintiff was entitled to recover the royalties specified in the contract on the articles made pending the appeal; his failure to procure an injunction restraining the manufacture and sale pending the appeal not procluding a recovery on the contract. Spring and Hiscock, JJ., *dissenting*.

A license does not become *ipso facto* void on a failure to pay royalties even if it contain an express stipulation to that effect. *Standard Dental Mfg. Co. v. Nat. Tooth Co.*, 75 Fed. 291. There must be some proper proceeding and a rescission in equity. *Hanifen v. Lupton*, 95 Fed. 465. The question in this case is obviously the effect of the judgment of the lower court pending appeal. When the case is to be tried anew upon appeal as upon original process, the effect of the appeal is to vacate and render null the judgment. *Powell on Appellate Proceedings*, c. 9. It is very clear that if the judgment remained good, the original cause of action would be merged in it, and might even be pleaded as a bar to it. *Curtiss v. Beardsley*, 15 Conn. 518. So, in an early case, it was held that the judgment of the common pleas, when regularly appealed from, becomes wholly inoperative. *Campbell v. Howard*, 5 Mass. 376. These cases must be distinguished from those where the appeal is in the nature of a writ of error or for review of errors only. In the latter class, the appeal does not vacate the judgment but merely suspends its execution. *Curtiss v. Root*, 28 Ill. 367. Some cases have held, however, that in either case the appeal does not suspend or supercede the force of the judgment. *St. v. Chase*, 41 Ind. 356; *Walls v. Palmer*, 64 Ind. 493.

RAILROADS — CROSSING ACCIDENT — CONTRIBUTORY NEGLIGENCE — INFIRM PERSONS. — TOLEDO P. & W. Co., v. HAMMETT, 77 N. E. (ILL.) 72. *Held*, that a deaf person on approaching a railroad crossing is required to be more careful in order to avoid contributory negligence than a person not so afflicted.

Highway travelers approaching a railroad crossing are charged with diligence to ascertain if a train is about to pass by; and their diligence must be greater accordingly as the particular locality and the circumstances of the case seem to require greater caution. *Morris v. Chic. M. & St. P. R. Co.*, 26 Fed. 22. The care and caution required of a person in crossing a railroad track is such reasonable care and caution as a man of ordinary prudence would exercise in similar circumstances. *Wichita & W. R. Co. v. Davis*, 37 Kan. 743. This usually requiring the traveler to "look and listen." *Easley v. Mo. Pac. R. Co.*, 113 Mo. 236. So it is gross negligence for a blind person to attempt to cross a network of tracks unattended, where he knows that trains are passing. *Fla. Cent. & P. R. Co. v. Williams*, 37 Fla. 406. A greater degree of care is imposed upon an infirm person to avoid danger in crossing the tracks, but the responsibility of the railroad is not increased by the fact of plaintiff's deafness. *Cleveland, C. & C. R. Co. v. Terry*, 8 Ohio St. 570; nor by the fact that plaintiff was blind in one eye, *Marks' Adm'r v. Petersburg R. Co.*, 88 Va. 1; unless the employees in charge of the train know of the infirmity. *C. C. & C. R. Co. v. Terry, supra*. Generally speaking an engineer is bound to use ordinary care but not the highest degree of care when approaching a crossing. *C. R. L. & P. R. Co. v. Caulfield*, 27 U. S. App. 358. And to protect a person in a helpless condition. *Yoakum v. Mettasch*, 26 S. W. 129. But not to stop a train, even when possible, because an idiot is on the